Editor's note: 90 I.D 10; Reconsideration denied -- See Pathfinder Mines Corp. (On Reconsideration), 76 IBLA 276 (Oct. 18, 1983); Appealed -- aff'd, Civ.No. 84-105-PHX-PGR (D.Ariz. Oct. 1, 1985), 620 F.Supp. 336; aff'd, No. 85-2834 (9th Cir. March 3, 1987), 811 F.2d 1288

PATHFINDER MINES CORP.

IBLA 82-752 Decided January 26, 1983

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring the Mud Nos. 1 through 22 lode mining claims null and void ab initio. A MC 156494 through A MC 156515.

Affirmed.

1. Mining Claims: Lands Subject to -- Public Lands: Generally -- Withdrawals and Reservations: Generally

   Where an Act of Congress authorizes the setting aside of lands for particular public purposes, and does not either expressly continue or prohibit the operation of the general mining laws, the intent of Congress in that respect must be gathered from the Act itself, or by historical interpretation of this Department of that Act and similar Acts relating to lands of the same status.

2. Mining Claims: Lands Subject to -- Public Lands: Generally -- Wildlife Refuges and Projects: Generally -- Withdrawals and Reservations: Generally

   Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

3. Administrative Authority: Estoppel -- Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Public Lands: Administration -- Secretary of the Interior

   The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

4. Mining Claims: Lands Subject to -- Public Records -- Withdrawals and Reservations: Generally

   If land has been withdrawn from mining, an erroneous public land record does not open the land to entry. A mining claim located on withdrawn land is null and void even if the land records erroneously indicate that the land is open.

APPEARANCES: John C. Lacy, Esq., and Spencer A. Smith, Esq., for appellant; Fritz L. Goreham, Esq., for the Bureau of Land Management; Joseph D. Cummings, Esq., for the United States Forest Service; Robert J. Golten, Esq., Denver, Colorado, for the National Wildlife Federation and Arizona Wildlife Federation, amici curiae.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Pathfinder Mines Corporation (Pathfinder) has appealed from the March 19, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the Mud Nos. 1 through 22 lode mining claims null and

void ab initio. The claims were located on November 20, 1981, and Pathfinder filed copies of the notices of location for the claims on February 11, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976). BLM determined that the land on which the claims were located was then, and remains, closed to entry under the mining laws, and declared the claims null and void ab initio.

The land involved in this appeal is presently within Kaibab National Forest. This forest was created on February 20, 1893, and enlarged to include the subject land on May 6, 1905. It was at that time called the Grand Canyon Forest Reserve. By a proclamation dated November 28, 1906, President Roosevelt declared this area the Grand Canyon National Game Preserve, pursuant to the authority given him under the Act of June 29, 1906, ch. 3593, 34 Stat. 607. The BLM, the Forest Service, and amici 1/ assert that this proclamation closed the land to mineral location. The proclamation, which substantially incorporates the provisions of the authorizing statute, makes no mention of whether the land is open to mineral entry. 2/

1/ By order dated Oct. 8, 1982, we granted the National Wildlife Federation and the Arizona Wildlife Federation leave to file a brief as amici curiae.

2/ The proclamation provides:

"Whereas, it is provided by the Act of Congress, approved June twenty-ninth, nineteen hundred and six, entitled, 'An Act For the protection of wild animals in the Grand Canyon Forest Reserve,' 'That the President of the United States is hereby authorized to designate such areas in the Grand Canyon Forest Reserve as should, in his opinion, be set aside for the protection of game animals and be recognized as a breeding place therefor.

"'Sec. 2. That when such areas have been designated as provided in section one of this Act, hunting, trapping, killing, or capturing of game animals upon the lands of the United States within the limits of said areas shall be unlawful, except under such regulations as may be prescribed from time to time by the Secretary of Agriculture; and any person violating such regulations or the provisions of this Act shall be deemed guilty of a misdemeanor, and shall, upon conviction in any United States court of competent jurisdiction, be fined in a sum not exceeding one thousand dollars, or by imprisonment

Appellant does not question the authority of the President to withdraw land from mineral entry; it merely contends that no such withdrawal was made as to this land. BLM's decision appears to have been based in part on an October 7, 1966, memorandum from the Field Solicitor to the Manager, Arizona Land Office. That memorandum states as follows:

> The present area of the preserve consists of three small parcels. Two of these parcels adjoin the Kaibab National Forest. The other parcel adjoins both the Kaibab National Forest and the Grand Canyon National Park.
>
> The question of whether mining locations may be made within the boundaries of the Grand Canyon National Game Preserve was previously considered by Assistant Secretary of the Interior Orme Lewis. In a letter dated January 4, 1955 to the Director, Department of Mineral Resources, State of Arizona, he stated that the preserve was not open to mineral location. The Assistant Secretary made reference to the fact that lands within the Wichita National Game Reserve in the State of Oklahoma were not subject to mineral location. 38 Op. Atty. Gen. 192 (February 5, 1935). It was also noted that the lands included within the Custer State Park Game Sanctuary in the State of South Dakota were not open to mineral location. A. Jackson Birdsell, A-25440 (January 31, 1949).

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for a period not exceeding one year, or shall suffer both fine and imprisonment, in the discretion of the court.

3. That it is the purpose of this Act to protect from trespass the public lands of the United States and the game animals which may be thereon, and not to interfere with the operation of the local game laws as affecting private, State, or Territorial lands';

"And whereas, for the purpose of giving this Act effect, it appears desirable that a part of the Grand Canyon Forest Reserve be declared a Game Preserve;

"Now, therefore, I, Theodore Roosevelt, President of the United States, by virtue of the power in me vested by the aforesaid Act of Congress, do hereby make known and proclaim that all those lands within the Grand Canyon Forest Reserve, lying north and west of the Colorado River, in the Territory of Arizona, are designated and set aside for the protection of game animals, and shall be recognized as a breeding place therefor, and that the hunting, trapping, killing, or capturing of game animals upon the lands of the United States within the limits of said area is unlawful, except under such regulations as may be prescribed from time to time by the Secretary of Agriculture."

> The Assistant Secretary thus determined that since the Act creating the Grand Canyon National Game Preserve was similar to the Acts under which the Wichita National Game Reserve and the Custer State Park Game Sanctuary were created, the lands within the boundaries of the Preserve were not open to mineral location.

Appellant contends, however, that the words of the authorizing statute indicate no intent to withdraw the land from mineral entry. Appellant argues that the only clear purpose emerging from the language of the proclamation was the protection of game animals and the land from trespass and contends that it was only in this respect that the preserve would differ from the Forest Reserve. Appellant refers to Congress declaration that "all valuable mineral deposits in lands belonging to the United States, * * * shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase * * *," 30 U.S.C. § 22 (1976), and appellant notes that in 1897, Congress expressly provided that land within forest reserves would be open to mineral entry. 16 U.S.C. § 482 (1976). Appellant seeks to derive a principle of construction from a 1906 Departmental opinion which considered the authority of the Department to withdraw from mineral location lands within a forest reserve for administrative sites:

> Authority to appropriate mineral lands for, or subject them to, use in aid of the administration of forest reserves can not be predicated upon the general authority of the Executive over the public lands or over forest reserves.
>
> If there be such authority it must be found in some provision of law which grants it or plainly recognizes it either by express terms or by inference so strong as to clearly indicate an intention to grant or recognize it.

Assistant Attorney General's Opinion, "Authority to Withdraw Lands Within a Forest Reserve," 35 L.D. 262, 265 (1906). Appellant contends that the Act

authorizing the reserve did not clearly withdraw the land, and that the President only exercised the authority granted in this statute without exercising any additional power to withdraw land from mineral entry. Appellant cites statutes and orders that have expressly withdrawn land from mineral entry and contends that the failure to do so here means that the lands should be considered open. We recognize that if public lands are to be efficiently managed, their status should be easily ascertainable. Orders permitting use of public land should make clear what uses are permitted and which are not. Appellant's argument is attractive because it is directed at this concern for clarity of land status.

A number of decisions, however, make it clear that a statute or order may close land to mineral entry without expressly mentioning the mining laws. If land was reserved from sale and set apart for public uses, that was sufficient to preclude location of claims under the mining laws. See 17 Op. Atty. Gen. 230 (1881). It has also been held that when a particular portion of a public domain is reserved or set aside for public use, it is severed from the public domain so that the laws which permit the acquisition of private rights in public land do not apply. See Wilcox v. Jackson, 13 U.S. 266, 13 Peters 498 (1839); P & G Mining Co., 67 I.D. 217, 218 (1960).

Under the reasoning of these cases, if land is set aside from the public domain, it is presumed that the land is no longer subject to laws permitting acquisition of title in the absence of an express provision to the contrary. The Birdsell opinion cited in the Field Solicitor's opinion, supra, follows this principle. The syllabus states: "Public lands included in a game sanctuary established pursuant to an Act of Congress which made no

provision for appropriation under the mining laws are not thereafter subject to location under the mining laws." The decision holds: "It is clear that the effect of the establishment of the game sanctuary pursuant to the Act of June 5, 1920, [ch. 247, 41 Stat. 986,] which made no provision for appropriation under the mining laws, had the affect of withdrawing the lands included in the sanctuary from such appropriation."

The Birdsell opinion concerned the Custer State Park Game Sanctuary which was authorized by the Act of June 5, 1920, supra, which made no reference to the mining laws. The sanctuary was renamed the Norbeck Wildlife Preserve by the Act of October 6, 1949, ch. 620, § 1, 63 Stat. 708. Meanwhile, Congress had recognized that the land within the game preserve was not open to mineral location, and enacted legislation in 1948 providing for the location of mining claims under the general mining laws but subject to numerous surface restrictions as well as a provision that no patent may be issued on any location filed within the game preserve. Act of June 24, 1948, as amended, 16 U.S.C. § 678a (1976). Thus, notwithstanding the failure of Congress or the President to specify that the land was withdrawn from mineral location when the Custer State Park Game Sanctuary was created in 1920, both this Department and Congress have recognized that the order creating the sanctuary had the effect of closing the land to mineral location.

[1] The Birdsell decision relied on a 1941 decision concerning the applicability of mining laws to revested Oregon and California and reconveyed Coos Bay grant lands which were to be managed for permanent timber production. Instructions, 57 I.D. 365 (1941). The Department noted how the purpose of the legislation relating to those lands could be thwarted by full

exercise of rights under the mining law. In that opinion, the Department made a thorough analysis of the principles to be applied in determining whether lands were open to mineral entry when Congress was silent on that issue, recognizing that lands could be closed to mineral entry with no express withdrawal:

> While the policy is well established that mineral lands are not to be sold or other wise disposed of except by express provisions of law, the Department is not aware of any established or stable public policy that lands set aside for particular public uses and purposes under any acts of Congress, which neither expressly exclude nor include mineral lands, are to be construed as subject to the mineral land laws. To the contrary, in many instances public lands reserved or withdrawn for sundry public uses and purposes by acts or pursuant to acts of Congress which do not in terms expressly include mineral lands, and likewise lands reserved or withdrawn by the President by virtue of his inherent power, which contain no reference to mineral land, are not subject to the operation of the mineral land laws. Among these instances of reserves where mineral exploration, location and development are not expressly inhibited but are not permitted, may be mentioned military reservations (17 Op. Atty. Gen 230); national monuments created under the act of June 8, 1906 (34 Stat. 225); Cameron v. United States, 252 U.S. 450. The various acts creating bird and game reserves (16 U.S.C. ch. 7) do not expressly forbid mineral location and entry or operations under the mineral land laws, nevertheless applications for permits under the General Leasing Act have been denied on such reserves where the operations would jeopardize or impair (J. D. Mell et al., 50 L.D. 308), or destroy (R. G. Folk, A. 20601, unreported, decided March 4, 1937) the usefulness of the reserve as a wildlife refuge. Mineral lands within withdrawals for stock-driveway purposes made under section 10 of the act of December 29, 1916 (39 Stat. 862), became subject to the mining laws under rules, regulations and restrictions provided by the act of January 29, 1929 (45 Stat. 1144). See 43 CFR 185.35. And likewise mineral land included in withdrawals for construction purposes under the reclamation act of June 17, 1902 (32 Stat. 388), were by the act of April 23, 1932 (47 Stat. 136), made subject to location and entry and patent under the mining laws in the discretion of the Secretary where the rights of the United States would not be prejudiced, with reservation of such rights, ways and easements necessary to the protection of the irrigation interests.
>
> While in the National Forest Act the Congress expressly opened the land to the miner, and other acts, such as the act of

> June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497), opened the withdrawals made thereunder to the miner of metalliferous minerals, the acts creating the national parks in the public land States have closed the door to the miner in such parks. See 16 U.S.C. secs. 21 to 355, inclusive; Lindley on Mines, sec. 196. As to acts setting aside lands for particular public purposes which do not expressly extend or prohibit the operation of the mineral land laws, there is no sufficient basis for the presumption that the mineral land laws, unless there are express words of exclusion, extend to them. On the contrary, in all such cases the intent of Congress in that respect must be gathered from the act itself. [Emphasis added.]

Id. at 372-73.

Appellant has argued that when Congress or the Executive wishes to remove an area from mineral entry, such intent was clear on the face of the legislation or the proclamation. The above authorities demonstrate that this argument is incorrect. Since the issue raised in this appeal cannot be resolved merely by looking at the language of the statute and proclamation itself, we must look for other evidence of congressional intent and we must construe the Act in a manner that gives effect to the objectives set forth in the Act and its legislative history; we should not construe the Act in a manner which would frustrate the achievement of those goals. For example, in considering whether the allowance of mineral entry would be consistent with congressional intent to manage reconveyed grant lands for permanent timber production, the Department analyzed the effects of allowing mining entry and contrasted them with the purposes of the legislation, finding that those purposes would be thwarted by mining activity and by acquisition of title to the land by miners. Instructions, supra at 370. 3/

3/ This analysis of the effects of allowing mineral entry has pertinence here:

"Under the mineral land laws * * * the locator of a mining claim based upon a sufficient discovery of mineral would have the right to the exclusive

If the Grand Canyon National Game Preserve had remained open to the location of mining claims, the exercise of rights under the mining law would not be limited as they are in the Norbeck Wildlife Preserve under 16 U.S.C. § 678a (1976). Appellant contends that the purpose of the game preserve can be achieved through a multiple use concept which would not require closing the preserve to mineral entry, but we note that where land set aside for the protection of game or wildlife has been opened to mining, the legislation places some restrictions on the location of mining claims that would not be applicable here. The legislation affecting the Norbeck Wildlife Preserve illustrates that point. In determining whether mineral entry is inconsistent with the purposes of the preserve, we must assume that the mineral claimant will exercise fully his rights under the mining laws. Amici assert that more

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possession and enjoyment of the claim, except as to such rights of entry by the United States as might be necessary for the cutting and removing of timber sold. He would have the right to use any quantity of timber necessary for his mine, no matter how much it would interfere with management for permanent forest production or with the principle of sustained yield or with the object of providing a permanent source of timber supply. He could upon compliance with the prerequisite conditions obtain absolute title to the land and thus prevent reforestation of the land, and even if he never applied for or acquired a patent, he could, * * * in the legitimate exercise of rights under the placer mining laws, completely denude the land claimed of its soil and vegetation so as to render it thereafter valueless for future timber growth and supply. A grant of rights under the mining law which in their lawful exercise would entail such possible consequences, is clearly inconsistent with the object and purpose of the act of 1937."

In 1948, Congress reopened revested Oregon and California and Coos Bay lands to mineral location, declaring previously located claims valid "to the same extent as if such lands had remained open to exploration, location, entry, and disposition" under the mining laws from Aug. 28, 1937, when Congress directed that those lands should be managed for permanent timber production. Act of Apr. 8, 1948, 62 Stat. 162. The conditional nature of the underscored language indicates that the 1948 Congress viewed the 1937 Act as closing the land to mineral location. In reopening the land, Congress made the claims subject to certain conditions that would not have been applicable had the land in fact been open between 1937 and 1948. Claimants acquired no title to timber on their claims and were required to record their claims with the Department and file annual statements relating to assessment work.

than 1,600 claims have been located in the Grand Canyon Game Preserve since November 1981.

Appellant claims that the legislative history suggests that no change in the use of the forest was intended as a result of the designation of the lands as a game preserve. The House of Representatives report states that the "protection of game in this reserve will in no wise impair the use of the forest reserve for any of the uses to which it is already set apart, and will prevent the extermination of the small remains of harmless wildlife now found therein." H.R. Rep. No. 4973, 59th Cong., 1st Sess. 2 (1906). This statement, however, does not indicate an intent to leave the land open to mineral entry, but only to leave it open to those uses for which the forest was already set apart. Because mining is a use generally applicable to the public domain, mining cannot be characterized as a use for which forests were set apart from the public domain. Although Congress provided that land within forest reserves would be open to mineral entry, it does not follow that land within the game preserve is also open.

We note that the legislative history of the Act creating the Grand Canyon National Game Preserve indicates that the legislation "is substantially in the same form as the Act authorizing the designation of the Wichita Forest Reserve as a game refuge." H.R. Rep. No. 4973, supra. It has been the Department's view that land within the Wichita National Game Reserve is not subject to entry under the mining law, as indicated in the Birdsell decision. The Department has based this conclusion on an opinion of the Attorney General that land added to the Wichita Forest Reserve is open to mineral entry because that additional land was never made a part of the Wichita National Game

Reserve. 38 Op. Atty. Gen. 192, 193 (1935). The clear implication of this opinion is that if the land had been included in the game reserve, it would not have been open to mineral entry. Notwithstanding appellant's arguments to the contrary, this conclusion is inescapable. 4/

Furthermore, the House Report cites with approval a Presidential message to Congress calling attention to the propriety of making such preserves, noting that they should "afford perpetual protection" and be "set apart forever." 5/ We find it difficult to reconcile these purposes with

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4/ The controversy focuses on the following sentences of the Attorney General's opinion:

"It appears, however, that these additional lands have never been made a part of Wichita National Game Reserve, either by Act of Congress or by Proclamation or Executive order. Such added areas are, therefore, subject to all legal restrictions applicable to national forest reservations, but are not subject to any additional restrictions applicable to the original area of the Wichita Forest Reserve by reason of its establishment as the Wichita National Game Reserve."

Appellant contends that the phrase "additional restrictions" in the game reserve refers to restrictions other than the closure of land to mining. This argument makes no sense. The very issue addressed by the Attorney General was whether land outside of the game reserve was open to mining. There would be no reason to refer to additional restrictions in the game reserve unless those restrictions involved mining.

5/ The text of the message quoted in the H.R. Rep. No. 4973, supra at 1-2, follows:

"Certain of the forest reserves should also be made preserves for the wild forest creatures. All of the reserves should be better protected from fires. Many of them need special protection because of the great injury done by live stock, above all by sheep. The increase in deer, elk, and other animals in the Yellowstone Park shows what may be expected when other mountain forests are properly protected by law and properly guarded. Some of these areas have been so denuded of surface vegetation by overgrazing that the ground-breeding birds, including grouse and quail, and many mammals, including deer, have been exterminated or driven away. At the same time the waterstoring capacity of the surface has been decreased or destroyed, thus promoting floods in times of rain and diminishing the flow of streams between rains.

"In cases where natural conditions have been restored for a few years, vegetation has again carpeted the ground, birds and deer are coming back, and hundreds of persons, especially from the immediate neighborhood, come each summer to enjoy the privilege of camping. Some at least of the forest reserves should afford perpetual protection to the native fauna and flora,

the intention to leave the land open to any form of entry that would result in alienation of title. Indeed, Acting Secretary Chapman's letter concerning the legislation to allow limited mining in the Norbeck Wildlife Preserve illustrates the Department's general view that the full exercise of rights under the mining laws is inconsistent with the purposes of a game preserve. 6/ Although appellant contends that decisions affecting other areas set aside for protecting game and wildlife provide no authority for construing the

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safe havens of refuge to our rapidly diminishing wild animals of the larger kinds, and free camping grounds for the ever-increasing numbers of men and women who have learned to find rest, health, and recreation in the splendid forests and flower-clad meadows of our mountains. The forest reserves should be set apart forever for the use and benefit of our people as a whole and not sacrificed to the shortsighted greed of a few.

"The forests are natural reservoirs. By restraining the streams in flood and replenishing them in drought they make possible the use of waters otherwise wasted. They prevent the soil from washing, and so protect the storage reservoirs from filling up with silt. Forest conservation is therefore an essential condition of water conservation."

6/ In his comments on the proposed legislation to open the Norbeck Wildlife Preserve to mining, Acting Secretary Chapman makes clear his view that mining locations are generally incompatible with game sanctuaries:

"The bill would permit mining locations under the general mining laws within the Custer State Park Game Sanctuary in the Harney National Forest in South Dakota. The locator would obtain the right to occupy and use the surface area necessary for his operations and to use timber and mineral deposits necessary for the operations. No patent, however, would be issued for the location. The mining operations would be subject to such rules and regulations as the Secretary of Agriculture may deem necessary to further the purpose of the sanctuary. The Secretary would also be authorized to prohibit mining operations within 660 feet of any Federal, State, or county road and within such other areas where the location of mining claims would not be in the public interest. Various other safeguards to protect the surface use and timber are provided.

* * * * * * *

"While I do not favor the authorization of activities within game sanctuaries which would impair their usefulness for wildlife purposes, in this particular instance, since the official administering the land believes that such impairment would not result from the passage of the bill, I interpose no objection to it. I must emphasize, however, that this should not be construed as a general concurrence by the Department with this type of legislation, since conditions may be considerably different in other instances." Letter from Acting Secretary Chapman to Hon. Richard J. Welch, quoted in S. Rep. No. 1597, 80th Cong., 2d Sess., reprinted in 1948 U.S. Code Cong. & Ad. News 2111, 2113.

effect of the legislation and proclamation creating the Grand Canyon National Game Preserve, the House of Representatives report makes explicit reference to the Wichita Game Reserve, and refers to the Presidential message relating generally to lands set aside for the protection of wildlife and game. Clearly, then, decisions affecting other areas set aside for the protection of game and wildlife constitute authority for construing the Act authorizing the Grand Canyon National Game Preserve.

[2] Appellant has attempted to make numerous distinctions between the Grand Canyon Preserve and other areas set aside for the protection of qualified game. 7/ However, we find none of those distinctions so great as to warrant giving opposite meaning to acts and proclamations which use essentially the same language, particularly in view of the evident congressional intent to give the areas similar protection. Accordingly, we hold that land within the Grand Canyon Game Preserve is not open to the location of mining

7/ Appellant asserts that this reserve is managed differently than other games preserves. Appellant notes that during the early 1900's, there were a number of withdrawals of Federal lands made for the purposes of protecting the Nation's wildlife resources. Appellant claims that these withdrawals resulted in the beginning of a transitional management scheme that developed out of a traditional forest reserve management and involved into the National Wildlife Refuge System which is managed in a highly restrictive manner by the Fish and Wildlife Service. Appellant claims that the Grand Canyon Game Preserve was found to be unsuitable for Fish and Wildlife jurisdiction and its attendant management policies, so it remained under the jurisdiction of the Forest Service to be managed as a national forest. Land within the National Wildlife Refuge system, such as the Wichita Mountains Wildlife Refuge, are closed to mineral entry unless otherwise provided by law. 50 CFR 27.64. Nevertheless, the fact that land within the Grand Canyon Game Preserve has subsequently been managed somewhat differently than those reserves which evolved into wildlife refuges has no bearing on the issue of whether or not the 1906 Act and proclamation left it open to location under the mining laws. The Norbeck Wildlife Preserve was opened to mining on a limited basis by an Act of Congress, not by some evolutionary process of administrative decisionmaking.

claims, and claims located on land after it was included in the preserve are properly declared null and void ab initio.

[3] Appellant contends that if the language of the statute and proclamation is ambiguous, the statute must be interpreted by examining the manner in which it was applied in the years immediately following its enactment. 8/ There is only one indication that the issue has been considered previously at the Departmental level, i.e., the Assistant Secretary's letter cited in the above-quoted Field Solicitor's opinion. The position adopted in that letter apparently was adverse to appellant's position. 9/ In considering the significance of actions taken by local officials in the administration of the preserve, we must bear in mind that the Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or his predecessors in interest. See Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976). It necessarily follows that this Board, in exercising the Secretary's review authority, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates. We note that appellant had been specifically advised that this land was not open to entry prior to its attempt to locate these claims. This totally precludes any finding that appellant has relied on any prior

8/ In support of this contention, appellant cites Andrus v. Shell Oil Co., 446 U.S. 657 (1980), which held that an earlier Departmental decision governed in determining the validity of certain oil shale claims instead of the legal principles announced in the decision issued more than 50 years after the claims were located overruling the prior interpretation. The case is not at all analogous, since there has been no prior Departmental decision that specifically addresses the issue of the location of mining claims within the Grand Canyon Game Preserve.

9/ This letter by Assistant Secretary Orme Lewis is not available; even if it were, it has not been indexed so it is not available as decisional precedent. See 5 U.S.C. § 552 (1976).

Departmental action with respect to the lands in question, so we are not now estopped from considering the correctness of those prior actions in determining the effect of the proclamation in this particular case.

Although appellant insists that we consider prior administrative actions, we note that with few exceptions, the administrative records relating to the preserve that have been provided us overwhelmingly demonstrate the views of local managers that the preserve was closed to any form of entry that could lead to the alienation of title from the United States. Although few of these materials date from the first two decades of the life of the preserve, the administrative records since that time are generally consistent on this point. Rather than recite each item in this history, we will turn our attention to those relatively few instances of administrative action cited by appellant which tend to indicate that the land was treated as open to mineral entry.

[4] A memorandum dated August 20, 1981, from the Acting Field Solicitor to the Chief, Branch of Lands and Minerals Operations, notes that the public records show that the area is open to entry. This would not be the first time that land records erroneously indicated that land was open. If land has been withdrawn from mining, an erroneous public land record does not open the land to entry. A mining claim located on withdrawn land is null and void even if the land records erroneously indicate that the land is open. See Rod Knight, 30 IBLA 224 (1977). We see no reason to hold otherwise here.

Appellant refers to a letter dated April 19, 1941, from the Acting Register, Phoenix District Land Office, that states that there are no

restrictions to mining locations on Federal game preserves. This letter does not refer specifically to the Grand Canyon Game Preserve, and as a statement of general policy, it is demonstrably incorrect when compared with the letter from Acting Secretary Chapman on the legislation to open the Norbeck Wildlife Preserve to mining. 10/ Furthermore, appellant notes that certain land within the preserve was withdrawn from entry under the mining law for a ranger station, an action which would not have been necessary had the land already been withdrawn from such entry by the proclamation of 1906. Public Land Order (PLO) No. 4715, 34 FR 15843-44 (Oct. 18, 1969). Amici note that Forest Service administrative site withdrawals routinely withdraw land from entry under the mining laws because national forests in general are open to entry under the mining laws and such withdrawal is necessary. They speculate that this particular withdrawal order was copied from those which are used for Forest Service land generally, with no deletion of reference to the mineral laws. Regardless of this speculation, we view this order as having little probative value in determining the status of the land, as it indicates no conscious determination of its prior status.

Finally, appellant notes that patents were issued in 1917 and in 1922 for claims located within the preserve after it was created. While these acts may constitute evidence that the land was considered by one or more employees to be open to mineral entry, that erroneous view on the status of the land does not bind the Department in other cases arising later. Amici and the solicitor suggest that issuance of the patents resulted from inadvertence, and note that the land was later reacquired by the United States,

10/ See note 6 supra.

illustrating the senselessness of a procedure which would expose to alienation land which the Government desires to retain for a public purpose. It would clearly contravene public policy to hold that the Government must surrender its title to lands reserved by it, and then reacquire them in order to devote them to the public purpose for which they were reserved in the first place.

In conclusion, we note that there are a number of statutes enacted in the early part of the century which, in setting aside public lands, have had the effect of segregating those lands from mineral entry without making express reference to minerals. 11/ We further note that statutes which authorize the setting aside of public land for the protection of game and wildlife have been construed as precluding mineral entry, and appellant has established no basis for construing the legislation authorizing the Grand Canyon Game Preserve or the proclamation creating it any differently. Accordingly, we find that BLM correctly determined appellant's claims to be null and void because the lands are closed to mineral location.

11/ Where no mention of mineral use or entry is made in an order withdrawing or reserving public land, the rule of interpretation applied to the location of claims under the general mining law is diametrically different from that applied to the operation of the mineral leasing laws on the same land. That is, unless a withdrawal or reservation of public land specifically provides otherwise, the land is presumed to remain subject to mineral leasing. Esdras K. Hartley, 54 IBLA 38, 88 I.D. 437 (1981). There are two excellent reasons for this distinct treatment. First, mineral leasing is at Secretarial discretion where the lands are open to leasing. Thus, where it is perceived that mineral leasing would be inimical to the public purpose for which the land has been reserved, it may be precluded by the exercise of Secretarial discretion. See, e.g., James K. Tallman, 68 I.D. 256 (1961), aff'd, Udall v. Tallman, 380 U.S. 1 (1965); Nugget Oil Corp., 61 IBLA 43 (1981); J. D. Mell, 50 L.D. 308 (1924) (upholding denial of a prospecting permit under the Mineral Leasing Act for land in Carlsbad Bird Reserve). Second, mineral leasing cannot divest the United States of its title to land which it has acted to reserve and retain in the public interest, whereas mining claim locations can result in alienation of the Federal title.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge